

REMARKS

In response to the above-noted Final Office Action of August 27, 2003, Applicants request that U.S. Patent No. 5,564,929 of Alpert be no longer cited as a reference pursuant to 37 CFC 1.131 on the grounds that common subject matter from Applicants' original parent patent application predates Alpert '929.

For example, the Examiner states that Alpert '929 discloses a post 28 made of a non-metallic material, which is non-woven and prefabricated with resin, and that it would be obvious to assemble them without traction.

However, Alpert '929 was filed on August 17, 1994, and in Applicants' earlier patent nos. 6,371,763, 5,919,044 and 5,915,970, Alpert '929 was distinguished because Applicants' original parent patent application was filed in 1993 before Alpert '929 was filed in 1994.

There is enough support in Applicants' original specification of 1993 for the pending Claim 33. Therefore, Alpert '929 should no longer be cited as a reference. With that in mind, Applicants' original specification describes a mutable bundle of non-metallic fibers in a resin.

For example, Applicants' original patent application no. 126,631 was filed on September 27, 1993 and issued as United States Patent No. 5,518,399 of May 21, 1996.

The original specification therein provided as follows:

"A mutable flexible post 100 is illustrated in FIG. 8 and a mutable post reinforcing rod 130 is illustrated in FIG. 9. Mutable post 100 and mutable post reinforcing rod 130 are preferably formed from a bundle of reinforced plastic or other fibers 101 cemented together at the central portion 101b and the lower portion 101c of the fibers 101. The upper portion 101a of the fibers 101 is loosely compacted so that the upper portion 101a may be selectively flared to provide additional surface area to scaffold a built-up core. Flaring of the upper portion 101a of the fibers 101 may be performed at the factory or in the dentist's office using standard crimping pliers. A prefabricated core (not shown) may be attached to the coronal aspect of the mutable post 100 when it is disposed in its unflared position.

As shown in FIG. 9 the mutable reinforcing rod 130 constructed in accordance with the teachings of the present invention may likewise be utilized in a flared or unflared position. A first core spacer 20 is attached to the coronal end of the mutable reinforcing rod 130. The mutable post 11' comprising a first core spacer 20 and a mutable reinforcing rod 130 may be used to support a prefabricated core, or the coronal end of the mutable post 11 may be flared to form a scaffold for a built-up core. An advantage of this preferred embodiment of the present invention is that a single construction can be used for either a prefabricated core, or by simply crimping the coronal end of the mutable post reinforcing rod 130 it may be used to support a built-up core."

Therefore, the use of a prefabricated post of non-metallic fibers in a resin was disclosed in Applicants' original parent patent application filed on September 27, 1993, before Alpert '929 was filed in 1994.

Besides attempting to pre-date Alpert '929 with subject matter from Dr. Sicurelli's and Dr. Masyr's original parent patent application filed on September 27, 1993, an argument is to be made that Alpert '929 describes inserting a "rope-

like" bundle of non-metallic fibers in a tooth and sealing same in situ. Therefore it can be argued that since Alpert '929 is an in situ process, it cannot describe a prefabricated post, as in the present subject matter.

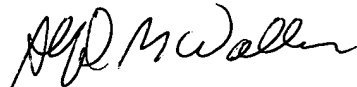
Applicant submits a fee of \$495.00 for the three month extension request.

In view of the foregoing, it is urged that the pending Claims 33-36 and 38-70 should be allowed.

The Examiner is requested to call the undersigned in the event other changes are required to obtain allowance of the application.

A favorable action is solicited.

Respectfully submitted,



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